No. 72-1052

In the Supreme Court of the United States

OCTOBER TERM, 1973

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR,
PETITIONER

v.

RAMON RUIZ AND ANITA RUIZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE SECRETARY OF THE INTERIOR

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CITATIONS

507-260—73——1

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 462 F. 2d 818. The district court did not write an opinion.

JURISDICTION

The judgment of the court of appeals was entered on May 31, 1972 (Pet. App. B). A timely petition for rehearing with suggestion of rehearing *en banc* was denied on August 31, 1972 (Pet. App. C). On November 20, 1972, Mr. Justice Douglas extended the time for the Secretary of the Interior to file a petition for a writ of certiorari to and including January 15, 1973,

and on January 8, 1973, further extended the time to and including January 28, 1973. The petition was filed on January 29, 1973,[1] and was granted on April 23, 1973. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Secretary of the Interior is required to provide general assistance benefits to Indians throughout the United States, contrary to the Secretary's established policy (on which Congress has based appropriations of funds) limiting such benefits to Indians and Indian families living on reservations in the United States or living in jurisdictions regulated by the Bureau of Indian Affairs in Alaska and Oklahoma.

STATUTES AND REGULATIONS INVOLVED

The Snyder Act, 42 Stat. 208, 25 U.S.C. 13, provides:

> The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:
>
> General support and civilization, including education.
>
> For relief of distress and conservation of health.
>
> For industrial assistance and advancement and general administration of Indian property.

[1] January 28, 1973, was a Sunday.

For extension, improvement, operation and maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating liquor and deleterious drugs.

For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs.

The Department of the Interior and Related Agencies Appropriations Act, 1968, Public Law 90-28, 81 Stat. 59, 60, provides in pertinent part:

BUREAU OF INDIAN AFFAIRS

EDUCATION AND WELFARE SERVICES

For expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States and other organizations, including payment (in advance or from date of admission), of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools; grants and other assistance to needy Indians; maintenance of law and

order, and payment of rewards for information or evidence concerning violations of law on Indian reservations or lands; and operation of Indian arts and crafts shops; $126,478,000.

Section 17 of the Act of June 30, 1834, 4 Stat. 738, 25 U.S.C. 9, provides in pertinent part:

> The President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs * * *.

66 Indian Affairs Manual provides in pertinent part:

> 3.1 *General Assistance.*
>
> 1. *Purpose.* The purpose of the general assistance program is to provide necessary financial assistance to needy Indian families and persons living on reservations under the jurisdiction of this Bureau and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.
>
> * * * * * *
>
> .4 *Eligibility Conditions.*
>
> A. *Residence.* Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.

STATEMENT

The facts in this case were stipulated.[2] Essentially, in 1940 respondents, who are Papago Indians and husband and wife, left the Papago Reservation and moved 15 miles away to Ajo, Arizona, a town populated principally by Papago employees of a copper

[2] The facts are accurately stated in the opinion below (Pet. App. A). The Agreed Statement of Facts is reproduced at App. 45–48.

mining company. In July 1967, some 27 years after they moved to Ajo, the mine in which Mr. Ruiz worked was closed by a strike. It remained closed until March 1968. During the strike Mr. Ruiz applied for Arizona welfare benefits, but as a striker he was found ineligible. Respondents then sought federal Indian general assistance benefits. After a hearing their claim was denied because neither of them lived on a reservation and they were thus ineligible for such benefits under the criteria specified by the Secretary of the Interior in the relevant provisions of the Department's Indian Affairs Manual (*supra*, p. 4).

The respondents then brought this suit challenging the eligibility requirements. The district court, without opinion, granted summary judgment for the Secretary. Respondents appealed, urging that the Secretary's restrictions on general assistance eligibility are invalid on both statutory and constitutional grounds. The court of appeals reversed, with one judge dissenting. Basing its decision on the Snyder Act, 42 Stat. 208, 25 U.S.C. 13, pp. 2–3, *supra*, it held "that the Bureau has imposed unauthorized residency restrictions upon the availability of general assistance benefits, in excess of its authority and in contravention of Congressional intent" (Pet. App. 29). The dissenting judge was of the view that the Snyder Act gives broad authority to the Secretary of the Interior and "does not preclude (indeed it seems to require) reasonable Bureau decisions as to how its limited funds may best be allocated and the drawing of reasonable classifications * * *." Pet. App. 31.

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SUMMARY OF ARGUMENT

1. The Snyder Act authorizes the Bureau of Indian Affairs to provide a general assistance program for Indians, but it leaves the details of the program to the Secretary of the Interior and to the congressional appropriation process. This is shown by both the language of the Act and its legislative history. The court of appeals has, therefore, misconstrued the Act in holding that it deprives the Secretary of the Interior of the authority to limit supplemental welfare benefits under the Act to Indians living on reservations or in areas subject to the jurisdiction of the Bureau of Indian Affairs in Alaska and Oklahoma.

2. Congress has not appropriated funds for general assistance to off-reservation Indians living in States other than Oklahoma and Alaska. The Appropriation Act for fiscal year 1968, the year at issue here, does not explicitly define the scope of the general assistance program. But the requests made to Congress by the Department of the Interior for fiscal year 1968 and, indeed, for all recent years have been for general assistance to needy Indians on reservations (and in the specified areas of Alaska and Oklahoma). Congress in 1968 granted less money for the general assistance program than the sum requested by the Department of the Interior for this purpose. Manifestly, therefore, Congress had no intention of substantially increasing the scope of existing and proposed services.

3. While in some instances Congress has legislated in detail as to Indian matters, Congress has given the Secretary of the Interior broad discretion in the

management of Indian welfare services. The Secretary's limitations on eligibility for general assistance benefits are a proper exercise of his authority and are constitutional. The distinctions are based on the degree of federal and tribal responsibility for the people in question and are traditional distinctions which this Court has upheld in other contexts as a reasonable basis for differentiating in governmental treatment of Indians. This Court has also recognized the inherent difficulties of dividing limited funds among competing classes of welfare claimants and the impropriety of judicial displacement of the reasonably exercised judgments of the political authorities required to make such determinations.

ARGUMENT

I

THE SNYDER ACT AUTHORIZES THE BUREAU OF INDIAN AFFAIRS TO PROVIDE A GENERAL ASSISTANCE PROGRAM FOR INDIANS BUT LEAVES THE DETAILS OF THE PROGRAM (INCLUDING THE ESTABLISHMENT OF ELIGIBILITY STANDARDS) TO THE SECRETARY OF THE INTERIOR AND TO SUBSEQUENT CONGRESSIONAL APPROPRIATIONS

Since 1924 (Act of June 2, 1924, 43 Stat. 253, as amended, 8 U.S.C. 1401), all Indians who were born in the United States have been recognized as American citizens and consequently as citizens of the State in which they reside. Accordingly, all Indians, whether residing on or off a reservation, are entitled to social security and state welfare benefits equally with

all other citizens of the State.[3] The benefits at issue in this case are welfare payments provided by the United States to Indians when state benefits are not available. The policy of the Department of the Interior has been to reserve the limited funds available for such benefits for Indians living on reservations or in areas under Bureau of Indian Affairs jurisdiction in Oklahoma and Alaska.[4] The court of appeals held this policy to be in violation of the Snyder Act (*supra*, pp. 2–3) and concluded that welfare benefits under the Act must be made available to Indians wherever located in the United States (see Pet. App. 21). This interpretation of the Snyder Act is, in our view, erroneous.

The Snyder Act is a general authorization Act for numerous programs of the Bureau of Indian Affairs. It does not attempt to establish the eligibility requirements or details of any program, but leaves that to the discretion of the Secretary of the Interior and to future Congresses in enacting appropriations. The Act provides in broad terms that "[t]he Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the

[3] See *State ex rel. Williams* v. *Kemp*, 106 Mont. 444, 78 P. 2d 585; Cohen, *Handbook of Federal Indian Law*, pp. 244–245 (1942 ed.); United States Department of the Interior, *Federal Indian Law*, pp. 285–287 (1958); Wolf, *Needed: A System of Income Maintenance for Indians*, 10 Ariz. L. Rev. 597 (1968).

[4] See 66 Indian Affairs Manual 3.1, 3.4 p. 4, *supra*. See also the discussion *infra* at pp. 15–18.

Indians throughout the United States * * *" for various purposes that the Act lists. The list of purposes is comprehensive and is obviously intended to include all activities of the Bureau of Indian Affairs (see pp. 2–3, *supra*).[5]

Included in the list of purposes is "general support," which is the subject of this litigation. The basic purpose of the Act is shown by its language to be not an attempt to narrow the broad discretion previously given the Secretary of the Interior over Indian affairs (see pp. 15–16, *infra*), but simply to serve as an *authorization* for any *appropriation* that Congress might subsequently enact.

That this was indeed the purpose of the Act is made clear by its legislative history. H. Rep. No. 275, 67th Cong., 1st Sess. (1921); S. Rep. No. 294, 67th Cong., 1st Sess. (1921); 61 Cong. Rec. 4659, *et seq.* As the following excerpts from that history show, the skeletal provisions of the Snyder Act were intended to limit neither the Secretary's authority nor Congress' own subsequent actions in passing appropriations.

As Representative Kelley, a member of the House Indian Affairs Committee and the first to speak after the bill was introduced, explained in speaking before the House sitting as Committee of the Whole, 61 Cong. Rec. 4659–4660:

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[5] A critic of the Act describes it as follows: "The Snyder Act is a familiar and somewhat distressing occurrence in the history of Indian affairs. As in other instances, Congress enacted a very general measure and left the rest up to the Secretary of the Interior and the BIA." *Wolff*, *supra*, 10 Ariz. L. Rev. at 607–608.

> Mr. Chairman and gentlemen of the committee, this measure simply makes in order the items which have been carried for many years in the Indian appropriation bills. I helped to take a number of these items out of the last Indian bill through points of order, but it was the most futile effort possible, for they were reinserted in the Senate and in the end nothing was accomplished. I am opposed to legislating on the point-of-order principle, where one man can prevent action by the entire body, and therefore I shall not oppose this measure. * * *

This view of the Act's purpose—to eliminate the basis for point-of-order objections to particular appropriations as not having previously been authorized—was specifically corroborated and further explained by Representative Carter of Oklahoma, also a member of the Indian Affairs Committee, *id.* at 4671–4672:

> Mr. Chairman and gentlemen of the Committee, in view of the turn that this debate has taken and the distance it has drifted afield, it might be well enough to call attention of gentlemen to what this bill really does. The bill does not undertake the enlargement or creation of a single activity which is not now in operation by the Indian Bureau. It simply provides for making certain appropriations in order for activities which have been carried along from year to year by appropriations of money for that year without any specific authorization for the work. * * *
>
> But the difficulty is that no general authorization has been made for many of the Indian Bureau agencies. Like Topsy, "they just growed." An epidemic would break out on some

> certain reservation and without objection an item would be inserted in the current appropriation bill for its suppression and control. Next, certain Indians would be found wanting to farm but without necessary farming implements and stock, so an industrial item would be inserted and no point of order raised against that. Thus the system grew up, and these different agencies were established by the simple insertion of an appropriation in the annual appropriation act without the passage of any organic act authorizing them.
>
> These appropriations were carried along from year to year as long as the Indian Committee had jurisdiction of appropriations without much friction. But when all appropriations were concentrated in the Committee on Appropriations then the fun began. Before this change the Indian Committee had both legislative and appropriating jurisdiction, and when that committee brought in these unauthorized items points of order were rarely insisted upon because no committee jurisdiction was transgressed and no other committee felt sufficiently aggrieved to kick up the row. When appropriation jurisdiction was taken away from the Indian Committee and the Appropriations Committee brought in their bill carrying those unauthorized propositions that constituted a clear invasion of committee jurisdiction, the Indian Committee rebelled and its membership * * * raised considerable fuss.

Any possible remaining doubt about the Act's purpose was then dispelled in the following colloquy, *id.* at 4672:

> Mr. ANDREWS. Will this bill do anything more than to prevent points of order on the Indian appropriation bill?
>
> Mr. CARTER. Absolutely nothing else. It does not start a single additional agency in the Bureau of Indian Affairs, it does not enlarge their activities, and does not create any new activities. It does nothing more than protect the committee reporting the bill against the whims and peevishness of some Member attacking the bill. * * *

The court of appeals' conclusion (see Pet. App. 19–20) that the Snyder Act has the substantive effect of requiring the Secretary not to distinguish between on and off reservation programs is, therefore, unfounded.

II

CONGRESS HAS NOT APPROPRIATED FUNDS FOR GENERAL ASSISTANCE TO OFF-RESERVATION INDIANS IN STATES OTHER THAN OKLAHOMA AND ALASKA

If the Court agrees with our view that the Snyder Act is merely an enabling Act, as its language indicates ("The Bureau of Indians Affairs * * * shall direct, supervise, and expend such moneys as Congress may from time to time appropriate * * *"), the most relevant inquiry is whether Congress appropriated funds for off-reservation general assistance in the fiscal year at issue. The Appropriation Act itself gives no definition to the scope of the general assistance program. It merely states "[f]or expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States * * *

grants and other assistance to needy Indians * * * $126,478,000." 81 Stat. 60, see pp. 3–4, *supra*, for full text of this provision.

The legislative history, however, clearly shows that no monies were appropriated for off-reservation Indian welfare for fiscal year 1968, the year at issue here.[6] While congressional debates on the Department of the Interior appropriations for fiscal year 1968 do not mention general assistance, the hearings before both the House and Senate Committees contain a summary of the Bureau of Indian Affairs' requests for general assistance funds. The requests specify that "General assistance will be provided to needy Indians on reservations who are not eligible for public assistance under the Social Security Act * * * and for whom such assistance is not available from established welfare agencies or through tribal resources." Hearings on Department of the Interior and Related Agencies Appropriations for 1968, H. Subcommittee of the Committee on Appropriations, 90th Cong., 1st Sess., p. 777 (1967), and S. Committee on Appropriations, Hearings, 90th Cong., 1st Sess., p. 695 (1967).[7]

[6] Nor was the situation different in recent prior or subsequent appropriation Acts (see discussion *infra*).

[7] The hearings for the preceding five years show identically worded requests. Hearings, S. Committee on Appropriations, 89th Cong., 2d Sess., Vol. 8, H.R. 14215, Part I (fiscal 1967), p. 267; Hearings, H. Committee on Appropriations, 89th Cong., 2d Sess., Vol. 16, Interior Appropriations, Part I (fiscal 1967), p. 255; Hearings, S. Committee on Appropriations, 89th Cong., 1st Sess., Vol. 7, H.R. 6767 (fiscal 1966), p. 653; Hearings, H. Committee on Appropriations, 89th Cong., 1st Sess., Vol. 15, Interior Appropriations, Part I (fiscal 1966), p. 747; S. Con-

There is no indication in the relevant appropriation Acts or their legislative history that Congress intended to expand the Indian welfare program presented to it in the Department's budget request. Indeed, for fiscal year 1968, the Department sought $129,478,000 for Indian education and welfare services, and Congress appropriated only $126,478,000. Manifestly, Congress had no intention of substantially increasing the scope of existing and proposed service.

Moreover, Congress legislated in the light of the clear provision in the Department's manual limiting welfare payments to reservation Indians.[9] If Congress

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mittee on Appropriaions, 88th Cong., 2d Sess., Vol. 11, H.R. 10433 (fiscal 1965), p. 148; Hearings, H. Committee on Appropriations, 88th Cong., 2d Sess., Vol. 17 (fiscal 1965), p. 775; Hearings, S. Committee on Appropriations, 88th Cong., 1st Sess., Vol. 10, H.R. 5279 (fiscal 1964), p. 70; and Hearings, H. Committee on Appropriations, 88th Cong., 1st Sess., Vol. 16 (fiscal 1964), pp. 843, 844.

[9] The Bureau of Indian Affairs Welfare Program has been codified in its present manual form since May 12, 1952. It is clear that Congress was well acquainted with the scope of the program. In numerous hearings the scope of assistance was clearly brought out. See, *e.g.*, Hearings, H. Committee on Appropriations, 86th Cong., 1st Sess., Vol. 12, p. 800, *et seq.* (1960) on Department of the Interior appropriations, for fiscal 1960. Testimony of Miss Gifford, Assistant Commissioner of Indian Affairs (*id.* at 801):

"I believe the question comes up concerning Indians living off the reservation and who are in need not for these categories but for other types of assistance. In many cases the States and counties say that those Indians ought to be the responsibility of the Bureau of Indian Affairs; that they do not have sufficient funds to take care of them. We have never included in our request for welfare appropriations funds to take care of the needs of those Indians living off the reservation."

See, also, Hearings, S. Committee on Appropriations, 85th

disapproved of this practice, it could have provided otherwise. But Congress took no such action. Thus its appropriation amounted to a ratification of the Department's clear practice. Cf. *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367, 382; *Old Mission Portland Cement Co.* v. *Helvering*, 293 U.S. 289, 293–294. In addition, Congress has in recent years twice rejected proposals which among other things would have provided for federal off-reservation general assistance for Indians. H.R. 9621, 87th Cong., 2d Sess.; H.R. 6279, 88th Cong., 1st Sess. See App. pp. 94–99, 130–134.

In short, Congress has appropriated no funds for a general assistance program for off-reservation Indians and in the absence of such an appropriation the Secretary of the Interior, as a practical matter, is unable to provide such a program.

III

THE SECRETARY'S LIMITATIONS ON ELIGIBILITY FOR GENERAL ASSISTANCE BENEFITS ARE A PROPER EXERCISE OF HIS AUTHORITY AND ARE CONSTITUTIONAL

1. Title 25 of the United States Code contains most of the permanent laws relating to Indians as such.

Cong., 2d Sess., Vol. 6, H.R. 10746 (fiscal 1959), p. 291, *et seq.* And in earlier years, see Hearings, H. Committee on Appropriations, 67th Cong., 4th Sess., pp. 184–185 (1922); Hearings, S. Committee on Appropriations, 77th Cong., 1st Sess., H.R. 4590, Vol. 3, pp. 160–162, 465–466 (1941); Hearings, S. Committee on Appropriations, 80th Cong., 1st Sess., H.R. 3123, Vol. 17, pp. 598–599 (1947); Hearings, S. Committee on Appropriations, 81st Cong., 1st Sess., H.R. 3838, Part I, Vol. 8, pp. 483, 592 (1949); Hearings, S. Committee on Appropriations, 82d Cong., 1st Sess., H.R. 3790, Vol. 8, p. 372 (1951).

While the statutes found there contain rather detailed provisions concerning such matters as allotment of tribal lands (25 U.S.C. 331, *et seq.*), formation of tribal governments (25 U.S.C. 461, *et seq.*), lease and sale of Indian lands (25 U.S.C. 391, *et seq.*), and descent and distribution of trust lands (25 U.S.C. 371, *et seq.*), there is no such detailed statutory provision for many of the social welfare programs of the Bureau of Indian Affairs. These programs are conducted under the general authorization of the Snyder Act and include the Bureau's law and order programs (25 C.F.R. 11), the Indian Business Development Fund (25 C.F.R. 80), and the general assistance and social welfare program at issue here (66 I.A.M. 3.1; *supra*, p. 4).*

It is obvious that in the operation of these programs, the Secretary must devise rules concerning eligibility. His administrative authority to adopt appropriate regulations, while implicit in the Snyder Act, is also explicitly conferred in the Acts of July 9, 1832, 4 Stat. 564, as amended, 25 U.S.C. 2, and of June 30, 1834, Section 17, 4 Stat. 738, 25 U.S.C. 9.

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* Some social welfare services are provided by the Bureau pursuant to statutes containing more specific and limited authority: 25 U.S.C. 271, *et seq.* contains detailed regulations on Indian Education, and 25 U.S.C. 305 authorizes the creation of the Indian Arts and Crafts Board. The Adult Indian Vocational Training Act of 1956, 25 U.S.C. 309, authorizes the Secretary to provide a vocational training program for adult Indians living on or *near* reservations (emphasis supplied). Indian health services are provided under the authority of the Secretary of Health, Education and Welfare. 42 U.S.C. 2001.

The 1970 census listed the total Indian population of the United States (including Alaska) as 827,091.[10] These figures include 8,996 Indians living in Chicago, 12,160 living in New York City and 24,509 living in the Long Beach and Los Angeles Metropolitan areas (table 67) with varying degrees of assimilation into the general society. The Department of the Interior's estimates for 1972 show 428,194 Indians living on Indian reservations and in areas under Bureau of Indian Affairs jurisdiction in Oklahoma and Alaska and 105,550 Indians living in counties adjacent to reservation or a total of 533,744 Indians living on or near Indian reservations.[11]

None of the programs operated under the authority of the Snyder Act is designed to benefit directly every American Indian throughout the Nation. For example, the law and order regulations apply only to tribes in which the traditional agencies for enforcement of tribal laws and custom have broken down and for which no adequate substitute has been provided by federal or state law (25 C.F.R. 11.1 (b) and (c)); eligibility for grants from the Indian Business Development Fund depends on whether the project is a profit-making enterprise generating jobs for Indians located on or near a reservation (25 C.F.R.

[10] United States Department of Commerce, Bureau of Census, 1970 Census of Population, General Population Characteristics, United States Summary PC (1)—B1 table 48. The census figures are based on responses which do not refer to any particular definition of "Indian".

[11] Estimate of Resident Indian Population and Labor Force Status, March 1972.

80.41); and eligibility for the general assistance program itself requires unavailability of general assistance from state, county or local governments, and need, in addition to reservation residency (66 I.A.M. 3.1).

2. The court below held "that Congress intended general assistance benefits to be available to all Indians, including those in the position of appellants, at the time the Snyder Act was passed." Pet. App. 21.[12] As we showed in point I, *supra*, however, the court's use of the Snyder Act as an eligibility standard for Indian general assistance misconstrues the Act. Moreover, to make these benefits available to "all Indians" would substantially diminish the benefits available for those Indians most isolated from ordinary commercial society and would provide benefits to fully assimilated Indians not based on any special relationship with the government and denied to the citizenry at large. There is no reason for imputing to Congress an intention to achieve any such result and, as we showed in point II, *supra*, the relevant appropriations Acts and their history strongly indicate a contrary intent.

Respondents, in their Brief in Opposition, do not unqualifiedly embrace the court of appeals' statement that general assistance benefits must be made available

[12] The court specifically did "not reach the constitutional due process question raised by [respondents] and express[ed] no view on the issue of whether Congress could, if it so desired, limit general assistance benefits to reservation Indians." Pet. App. 29.

to "all Indians,"[18] but suggest an eligibility requirement such as that used by the Public Health Service which would include off-reservation Indians with important tribal ties. See 42 C.F.R. 36.12; Br. in Opp. pp. 6–7. This is a more modest proposal than the apparent holding of the court below. However, the pertinent considerations in establishing eligibility requirements for health services are not necessarily the same as those for General Assistance benefits. For example, Indians both on and off the reservations may have many of the same health problems and may be substantially interdependent as a public health matter because of frequent contacts with each other. And once a hospital or other health facility has been built, it may be advantageous to make it available to the largest number of people legally possible under the statutes authorizing its operation. But in dispersing funds for General Assistance where a limited total fund may be available, different criteria may seem appropriate. We do not argue the wisdom of one eligibility requirement over another, but merely that Congress in authorizing the program has not prescribed detailed eligibility criteria and that the choice among reasonable alternatives rests properly with the Secretary of the Interior and with Congress in its appropriations processes.

The decision to restrict eligibility for certain Indian benefits to Indians residing on reservations and under the jurisdiction of the Bureau of Indian Affairs in

[18] Respondents suggest the possibility of a narrow definition of the word "Indian" for this purpose. Br. in Opp., pp. 6–7.

Oklahoma and Alaska has a reasonable basis. It invokes a traditional distinction between on-reservation and off-reservation activities that this Court has recognized for various purposes. Only recently, in *Mescalero Apache Tribe* v. *Jones*, No. 71-738, decided March 27, 1973, in drawing a distinction between taxation of Indian tribes for activities on or off reservation, the Court stated (slip op., p. 4):

> But tribal activities conducted outside the reservation present different considerations. "State authority over Indians is yet more extensive over activities * * * not on any reservation." *Organized Village of Kake*, * * * [369 U.S. 60] at 75. Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.

We do not argue that the jurisdiction of the Secretary of the Interior to render service to Indians ends at reservation boundaries. But Indians who live on reservations have submitted themselves to a different governmental structure than those who live off reservations. They depend much more on the tribal government and the federal government as trustee than do those living off reservation, particularly on nonrestricted land. Thus, on reservations, where the authority of the Secretary of the Interior is greater and the authority of the States is less, the responsibility of the federal government for assuring that the special needs of the Indian inhabitants are met is also greater. Moreover, because reservations were often established

in remote places with inadequate resources, job opportunities have been particularly lacking on reservations and the need for special assistance to the chronically unemployed has been particularly acute.[14] While the situation of some urban Indians is bleak, the decision to seek a different way of life in the larger society is usually a voluntary one, and the Indians' situation is shared by many other migrants to cities, all of whom have equal access to ordinary state and federal benefits.

The situation of Indians in Alaska and Oklahoma has historically been unique. Much of Oklahoma was once set aside as an Indian Territory, and though most of the reservations have been abolished, there remains a large area of concentrated Indian population with tribal organization, living on land held in trust by the United States. See, generally, U.S. Department of the Interior, *Federal Indian Law*, pp. 985–1051 (1958). A similar situation of large concentrations of native Americans, with few reservations and substantial separate legislation prevails in Alaska (*id.* at 927–964). The responsibilities of the Bureau of Indian Affairs in these jurisdictions are substantially similar to the Bureau's responsibilities on the reservations.

In *Dandridge* v. *Williams*, 397 U.S. 471, aware of the difficulty of dividing limited funds among competing classes of welfare claimants, this Court upheld the State's choices against the contention that they

[14] See Taylor, *Indian Manpower Resources: The Experiences of Five Southwestern Reservations*, 10 Ariz. L. Rev. 579 (1968); Wolf, *Needed: A System of Income Maintenance for Indians*, 10 Ariz. L. Rev. 597 (1968).

violated the Equal Protection Clause of the Fourteenth Amendment. The Court reiterated that (*id.* at 485):

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78. "The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific." *Metropolis Theatre Co.* v. *City of Chicago*, 228 U.S. 61, 69–70. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *Maryland*, 366 U.S. 420, 426.

These premises led the Court to conclude (397 U.S. at 487):

> * * * The Constitution may impose certain procedural safeguards upon systems of welfare administration, *Goldberg* v. *Kelly, ante*, p. 254. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. Cf. *Steward Mach. Co.* v. *Davis*, 301 U.S. 548, 584–585; *Helvering* v. *Davis*, 301 U.S. 619, 644.

See, also, *Jefferson* v. *Hackney*, 406 U.S. 535, 546–547.

In *Richardson* v. *Belcher*, 404 U.S. 78, the Court applied a similar test to a federal welfare provision attacked as invalid under the Due Process Clause of the Fifth Amendment, holding (*id.* at 84):

> We have no occasion, within our limited function under the Constitution, to consider whether the legitimate purposes of Congress might have been better served by applying the same offset to recipients of private insurance, or to judge for ourselves whether the apprehensions of Congress were justified by the facts. If the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment.

Here, the Secretary of the Interior has repeatedly requested and Congress has repeatedly appropriated funds for general assistance to be provided only to Indians residing on Indian reservations or in areas under the jurisdiction of the Bureau of Indian Affairs in Alaska or Oklahoma (see point II, *supra*). That determination by both the Executive and the Congress that these are areas of special need and special responsibility is reasonably based on substantial legal and factual considerations, and is in no way violative of the Fifth Amendment of the United States Constitution.

CONCLUSION

For the foregoing reasons the judgment of the court of appeals should be reversed.

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JULY 1973.

U.S. GOVERNMENT PRINTING OFFICE: 1973